UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

Sherry Reese, : Civil Action No.: 5:15-cv-397

Plaintiff,

v.

Consolidated Credit Counseling Services, Inc.,

Defendant.

COMPLAINT

For this Complaint, Plaintiff, Sherry Reese, by undersigned counsel, states as follows:

JURISDICTION

- 1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").
- 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

- 3. Plaintiff, Sherry Reese ("Plaintiff"), is an adult individual residing in San Antonio, Texas, and is a "person" as defined by 47 U.S.C. § 153(39).
- 4. Defendant, Consolidated Credit Counseling Services, Inc. ("Consolidated"), is a Florida business entity with an address of 5701 West Sunrise Boulevard, Suite 200, Fort Lauderdale, Florida 33313, and is a "person" as defined by 47 U.S.C. § 153(39).

FACTS

5. Within the last year, Consolidated placed calls to Plaintiff's cellular telephone, number 210-xxx-7727, in an attempt to solicit its services to Plaintiff.

- 6. The calls were placed from telephone number 954-377-9222.
- 7. When Plaintiff answered Consolidated's calls, she heard silence followed by an automated click before she was transferred to a Consolidated operator.
- 8. The foregoing is indicative of a predictive dialer, an automatic telephone dialing system ("ATDS") under the TCPA.
- 9. During a conversation with a live representative, Plaintiff advised Consolidated that she was not interested in Consolidated's services and directed Consolidated to remove her number from its system and to cease all calls to her.
- 10. Nevertheless, Consolidated continued to place automated calls to Plaintiff's cellular telephone.

<u>COUNT I</u> VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.

- 11. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
 - 12. Defendant called Plaintiff on her cellular telephone using an ATDS.
- 13. The Federal Communications Commission ("FCC") defines a Predictive Dialer as "a dialing system that automatically dials consumers' telephone numbers in a manner that "predicts" the time when a consumer will answer the phone and a [representative] will be available to take the call…"2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not "free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear 'dead air' or a dial tone, causing frustration." *Id*.
- 14. The TCPA places prohibitions on companies that "abandon" calls by setting "the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned." *Id*.

- 15. When Plaintiff answered the phone, she heard silence and a click before Defendant's telephone system would connect her to the next available representative.
- 16. Upon information and belief, Defendant's Predictive Dialer(s) have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.
 - 17. Plaintiff revoked consent to be called at her cellular number.
- 18. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
- 19. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 20. Each of the aforementioned calls made by Defendant constitutes a violation of the TCPA.
- 21. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
- 22. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and

C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: May 14, 2015

Respectfully submitted,

By: <u>/s/ Sergei Lemberg</u>

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